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Delegates to the Sixth Illinois Constitutional Convention arrived in Springfield without any intention of transforming their state government into a dictatorship. Yet, with the enactment of article IV, section 9(e), of the new constitution (hereinafter referred to as the amendatory veto), many legislators have expressed fears that the downfall of the democracy in Illinois is imminent. Senator Hudson R. Sours predicted that the power of the Governor would rise to a height comparable to Hitler, Stalin, Mussolini or Julius Caesar. Representative John S. Matijevich concurred in this prophecy of catastrophic consequences:

This provision places dictatorial powers in the hands of the governor. . . . It's very dangerous. A ruthless governor could use it and wield it to the detriment of everybody.\(^3\)

As yet, Sours' and Matijevich's forecasts of doom have not materialized. However, the scope and limitations of the amendatory veto power of the Governor of Illinois have remained the subject of considerable debate among the three branches of government since the constitution's passage in 1970.

The amendatory veto concept has been praised by some constitutional scholars as a pragmatic gubernatorial device which maximizes efficiency and excellence in the legislative process.\(^4\) The progressive intent behind the clause is to "provide an avenue for the governor to suggest a change instead of vetoing outright bills presented to him."\(^5\)

1. ILL. CONST. art. IV, § 9(e).
2. Transcript of the Senate Session, May 1, 1973, at 47.
5. 6TH ILLINOIS CONSTITUTIONAL CONVENTION, VERBATIM TRANSCRIPT, vol. 3, at 1338.
Amendatory Veto

In the past, important legislation met an unfortunate death on the Governor's desk whenever he failed to agree with one minor portion of a bill passed by the General Assembly. Proponents of the amendatory veto have heralded the provision as a money-and-time-saver since it provides an opportunity to expeditiously enact an altered bill into law. There is no longer need for the bill's sponsor to regroup his forces, hoping his piece of legislation will fare better during the next General Assembly session.

These conflicting views regarding the scope of the amendatory veto provision result from a failure of the Convention delegates to resolve the ambiguities of the veto clause. Unstated in either the transcripts of the Constitutional Convention or in the final language of article IV, section 9(e), is an explicit declaration of the scope of the veto power. As a result of this lack of constitutional guidance, the delegates in Springfield created more than just a constitution in 1970; they created an interpretive battleground.

THE BIRTH OF A CONFRONTATION

In an attempt to offer the Governor an alternative to an outright veto of a bill, the delegates on the Executive Committee, the Legislative Committee, and the Committee on Styling, Drafting and Submission formulated the amendatory veto clause. Taking note of the relative success of the amendatory veto provision in four other states' constitutions, the delegates from these committees attempted to present to the Convention a provision that would allow the lawmaking wheels of government to turn more effectively than they had operated under the three previous Illinois constitutions. The amendatory veto clause as finally adopted by the Constitutional Convention states:

The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

6. 6TH ILLINOIS CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSALS, vol. 6, at 403.
7. ALA. CONST. art. V, § 125; MASS. CONST. art. I, § 186; N.J. CONST. art. V, § 1 (14a); VA. CONST. art. V, § 6(3).
8. The three previous Illinois constitutions were adopted in 1818, 1848 and 1870.
9. ILL. CONST. art. IV, § 9(e).
Analogous to an abbreviated ping-pong game, with legislation bouncing back and forth between the General Assembly and the Governor, the amendatory veto is the newest alternative open to a Governor who disagrees with a bill. As indicated, when the Governor receives a bill from the Legislature, he may return it to the house of its origination along with “specific recommendations” for change. The initial legislative body then has fifteen days to accept or reject the recommendations and to send the bill to the other house which follows the same procedure. If the General Assembly accepts the alterations by a majority vote of each house, it returns the bill to the Governor for certification. Once again the Governor has the option to sign the bill or return it as a vetoed bill to the original house. On the other hand, if the Legislature chooses to reject the Governor's specific recommendations, it can enact the original bill into law only by overriding his veto with a record vote of three-fifths of each legislative body.

This procedure places the state's chief executive directly in the middle of the legislative process. As a result, state senators and representatives have vociferously objected that the amendatory veto does great violence to the democratic principle embodied in the state's past constitu-

11. The relevant veto provisions state:
   (b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.
   (c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within fifteen calendar days after such entry that house by a record vote of three-fifths of the members selected passes the bill, it shall become law.
   (d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.
   (e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

ILL. CONST. art. IV, § 9(b)(c)(d)(e).
Another criticism of the amendatory veto provision is that it upsets the framework of separation of powers in state government. Undoubtedly, the Governor takes a more active role in the passage of legislation under the new constitution. However, proponents of the veto clause are neither convinced that such an active part in the legislative process is undesirable nor that it is new to Illinois politics. Senator Dawn Clark Netsch, the original sponsor of the amendatory veto in the Constitutional Convention, noted that the committees designed the veto provision with two thoughts in mind: first, the delegates realized that the Governor already took an active part in proposing and opposing legislation; secondly, it was the Convention's opinion that the people needed a more resourceful governor to deal expeditiously with current conflicts in the state of Illinois. In advocating the strengthening of the Governor's position, Senator Netsch observed:

> The overwhelming weight of scholarly opinion supports the thesis that effective American state government requires a single, strong, popularly elected executive with adequate powers to serve as the principal spokesman for and leader of the broadest possible public interest.

Another proponent of the amendatory veto has noted that, in essence, the provision does not alter the separation of powers formula. The Legislature still has the prerogative to reject the Governor's amendments if the lawmakers feel the chief executive has stepped outside his scope of authority. The Governor still cannot effectively direct policy without securing the support of at least a majority of the Legislature. This protection lends weight to the observation of Senator Netsch that strengthening of one branch of the government does not necessarily weaken another branch.

At least partially due to an interpretive dilemma over the scope of the amendatory powers of the Governor, the advantages of the provision have been lost amid a power struggle in Springfield. By contrast, studies by the delegates to the Constitutional Convention showed that legislators in the four pioneering states overcame the petty bickering and embraced the amendatory veto as a useful means of accommodation between the governor and legislature. In Alabama, for exam-
ple, all but seven of two hundred and thirty-five such vetoed bills were enacted according to the Governor's suggestions in the fifty years following the passage of the veto provision.\(^{20}\) In addition to receiving approval from the legislatures, state courts have also embraced the amendatory veto concept. In the *Application of McGlynn*\(^{21}\) New Jersey's highest court analyzed its state's constitutional provision, part of which is similar to the amendatory veto clause in the Illinois constitution. Although the court noted that the framers of the New Jersey constitution failed to explicate the extent of the Governor's veto power, it held that the veto clause was clearly intended to take care of a situation where the Governor does not wholly agree with the bill, but approves of it in principle or is willing to accept only portions thereof.\(^{22}\)

Such a pragmatic application of the veto provision has resulted in praise by executives, legislators, judges, and scholars who view the new veto system as one of the most promising legislative developments in years.\(^{23}\) Unquestionably, non-substantive technical changes made by the Governor in Illinois would receive the same staunch support in the Land of Lincoln as substantive changes have in New Jersey. A gubernatorial correction of a minor error in a bill would hardly bring on prophecies of a dictatorship. However, major substantive revisions of legislation by the two Illinois Governors who have utilized the power have raised these outcries from the General Assembly.

The broad use of amendatory veto power by Governors Ogilvie and Walker has highlighted the Convention's failure to delineate the extent of the Governor's authority to fundamentally alter bills. Can the Governor make major substantive changes in the bills and still act within the framework of the amendatory veto? May the legislators make additions to or deletions from some of the Governor's suggestions when the chief executive returns an unsigned bill? These questions must promptly be resolved to avoid a destructive power struggle between the legislative and executive branches of government in Illinois.

AN ATTEMPT TO SOLVE THE DILEMMA—
THE ATTORNEY GENERAL'S APPROACH

In October of 1971, Senator W. Russell Arrington wrote a letter to

\(^{22}\) Id. at 15, 155 A.2d at 296.
William J. Scott, Illinois Attorney General, requesting an interpretation of the scope of the amendatory veto in reference to the Legislature's right to further revise bills vetoed by the Governor under article IV, section 9(e). Scott suggested that the proper analytical approach to determining the extent of the veto power would be to review previous methods utilized by the Illinois Supreme Court to interpret past constitutions. Scott concluded that the supreme court has formulated the following standards:

(a) that the Illinois Constitution is to be liberally construed;
(b) that the meaning of constitutional language is best ascertained by considering the purposes of the disputed provision; (c) that such a provision should be construed to give effect to the spirit in which it was adopted; (d) that narrow, technical reasoning should not be applied; and (e) that which is within the intention is within the provision even if not within the letter.

This analysis began with an examination of a case which involved a debate over whether the original Constitutional Convention intended to grant the Legislature the power to charter the Bank of Illinois. The court held that the sensible intent of the framers should govern its decision. In other words, when the construction of a constitutional provision results in an unreasonable interpretation of a bill, the court has advocated that such a reading should be avoided, provided the clause is susceptible to another interpretation.

Scott drew upon three other cases to support his standards of constitutional analysis. In People of Illinois v. Vickroy the Illinois Supreme Court stated its approval of a reasonable and practical interpretation of constitutional provisions. The Vickroy court reached this conclusion while holding invalid the Legislature's attempt to give township authorities the power to regulate the salaries of town officers in accordance with the size of their counties. In another case the Illinois Supreme Court concluded that interpreters of constitutional provisions should adopt broad but reasonable constructions whenever possible. Thus, the court allowed the General Assembly to alter the provisions of a special charter to the city of Jacksonville, Illinois, and commented:

In construing constitutions, as with statutes, the chief purpose is to give effect to the intent of the makers. In seeking such inten-
tion we are to consider the language used by the legislature, the evil to be remedied and the object to be attained.29

Scott concluded his support for his interpretive standards by citing *Wolfson v. Avery*.30 The *Wolfson* court examined the transcripts of the Fifth Constitutional Convention as a guide to determining the validity of a legislative attempt to classify directors of corporations in a unique manner. As the Illinois Supreme Court observed:

[T]he practice of consulting the debates of the members of the convention which framed the constitution, as aiding to a correct determination of the intent of the framers of the instrument, has long been indulged in by courts as aiding to a true understanding of the meaning of provisions that are thought to be doubtful.31

Following the advice of this opinion, an analysis of the transcripts of the Sixth Constitutional Convention is necessary to gain insight into the intent of the framers. According to Attorney General Scott, the courts will interpret the delegates' comments as liberally as possible in an attempt to avoid narrow technical objections to the amendatory veto provision.32 However, before the constitutional scholar embarks upon an examination of the Convention's records, Governor Ogilvie has suggested an intermediate step in the analysis. According to the Ogilvie plan, the key word in the amendatory veto interpretation is "germane."33

THE GERMANE TEST AND THE SCOPE OF AN AMENDMENT

From Governor Ogilvie's point of view, the amendatory veto is merely one cog in the legislative machinery. The Governor strongly urged that the applications of the veto be examined under the same standards which the courts have applied to other amendments to bills. In support of his position, Governor Ogilvie observed:

I believe the proper limits on the amendatory veto power are those which apply to the General Assembly itself when one house amends a bill passed by another. The constitution requires that "bills... shall be confined to one subject." Amendments must be germane or closely akin to the purpose of changing the subject matter of a bill under the original number. Similarly, the governor's amendatory recommendations must be germane to the subject matter of the legislation. Beyond this, it is hard to see how the Court can and should draw a line between a governor's recommendations

29. *Id.* at 143, 113 N.E. at 120-21.
30. 6 Ill. 2d 78, 126 N.E.2d 701 (1955).
31. *Id.* at 88, 126 N.E.2d 707.
which are permissible and those which are not. If a governor proposes a change in a bill and both houses of the general assembly agree with him by majority vote, why should the judicial branch of government intervene?34

The leading case which served as the basis of the Ogilvie analysis is Giebelhausen v. Daley.35 The issue in Giebelhausen was not gubernatorial revision powers, but rather to what extent the Legislature was permitted to make changes as a bill passed from one house to the other.

According to the Illinois Supreme Court, an amendment could be added to a proposed piece of legislation without re-reading the bill three times (as was constitutionally required for new bills36) if the addition was germane to the original bill.37 The court defined germane by the words “akin” or “closely allied” or bound by a “common tie.”38 A common tie may be found in the “tendency of the provision to promote the object and purpose of the act to which it belongs.”39 Thus, a legislative amendment has been interpreted to be within a judicially acceptable scope if its substance is germane to the rest of the bill. It was Ogilvie’s contention that this test should be the critical one for gubernatorial alterations as well.

Although further support for the Ogilvie position can be found in other cases that have dealt with the proper scope of legislative amendments,40 the Illinois Supreme Court ignored the germane test in its only encounter with the amendatory veto.41 Despite the fact that the briefs for both the petitioner and the respondent in People ex rel. Klinger v. Howlett extensively discussed the germane issue, the court completely disregarded the concept in expressing its opinion in the case.42 Thus, it is apparent that although the germane standard has been appropriately utilized to determine the acceptable scope of the Legislature’s amendments, in the succession of bills from one house to the next, the test is inappropriately applied to analyze the limits of the Governor’s amendatory veto power. Therefore, since Ogilvie’s

34. Id.; excerpt from the Illinois State Register, Feb. 18, 1972.
35. 407 Ill. 25, 95 N.E.2d 84 (1950).
36. ILL. CONST. art. IV, § 13 (1870).
38. Id. at 47, 95 N.E.2d at 94.
39. Id.
42. Brief for Petitioner at 43, Brief for Respondent at 27, People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972). The Klinger case will be discussed in greater detail in the next section of this article.
germane test failed to delineate the scope of the veto provision, it is advisable to return to the analysis proposed by Attorney General Scott and take a closer look at the transcripts of the Constitutional Convention in an attempt to solve the interpretive riddle of the amendatory veto provision.

**The Convention Debate**

The crucial concern of the delegates who studied the amendatory veto clause centered on the extent to which the Governor and the Legislature could alter bills before their enactment. In an attempt to eliminate normal delays and expenses incident to legislative failures resulting from former veto options, the delegates created an alternative procedure. Rather than waiting until the next session of the General Assembly for the bill to reappear on the Governor’s desk with the disagreements between the two governmental branches hopefully resolved, the new veto proposal stressed legislative efficiency.

**The Legislature’s Amendatory Veto Powers**

As a part of this time-saving procedure, the Executive Committee sought to avoid the so-called “ping-pong” effect of the Legislature’s sending the Governor’s suggestion back with an additional alteration only to have the Chief Executive make another addition or deletion. The delegates, therefore, expressed an intent to place certain limitations on the amendatory veto procedure. Delegate Frank Orlando expressed the attitude of the committee that formulated the proposal by noting:

The provision covers, as it states there, that if the governor has an amendment that he feels would cure objections that he would have or that would leave him no alternative otherwise than to veto the entire bill—if he has an amendment and sends the bill back with the amendment, and the legislature condescends to accept the change he specifies, then that's it. There is no further action to be taken by the legislature by way of changing his amendment or adding something else to it.43

Delegate Ronald C. Smith added that if the General Assembly tampered even slightly with the language of the Governor’s amendment, the houses would have to “start from scratch” on a new bill.44 Nevertheless, the final draft of the amendatory veto provision ignored the committee’s suggestions and instructed the Governor to send “recommen-

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44. Id.
Amendatory Veto

The Convention adopted this wording despite objections that the General Assembly would interpret this as an open invitation to tamper with the Governor's language. Therefore, the Convention adjourned without clearly indicating the Legislature's options upon receipt of a gubernatorial recommendation.

If the spirit of flexibility controlled the interpretation of the amendatory provision, the Legislature apparently could alter the Governor's revisions with constructive changes. This is the doctrine supported by Attorney General Scott who feels the flexible reading of the amendatory veto clause best meets the tests he outlined for analyzing constitutional provisions:

[T]he General Assembly should not be limited to "acceptance" of a "specific recommendation" as precisely formulated or restricted but would have some latitude since the Governor might feel that the acceptance, even though somewhat modified, came within the spirit if not the letter of his recommendations. He would then be able to certify that the acceptance "conforms" to his recommendations, as being similar, in harmony and agreement, or as resembling or corresponding to them. To hold otherwise would ignore the use of the special word "conform". The section does not say the Governor must certify the General Assembly had "accepted", (in the literal word for word sense) his recommendations, but only that the "acceptance conforms" to his recommendations.

Although Scott's textual analysis is persuasive, if the courts interpret the Constitutional Convention language literally, giving full weight to the debate on article IV, section 9(e), the General Assembly could only have unofficial discussions with the Governor, and could not start

45. The initial drafting of the veto provision included the word "suggestions," which prompted Delegate William H. Sommerschield to state that:

[T]he language does not specify that the revision—or the legislature acceding to the provisions of the governor—has to be exact; and I think this could be solved by, in line 4 and in line 9, changing the word "suggestions" to "amendments." Then if they don't agree to the specific amendments, it is fairly easy to see that they have not agreed to his amendatory veto and that he cannot certify it.

However, the interpretation of the words "conforming to his suggestion," I think, is wide open; and they can conform to the spirit of his suggestions while not conforming to the specific law—or requirements, as it were—of his suggestions. I think some consideration should be given to changing the word "suggestions" to "amendments."

Id. at 1357.

46. Senator Netsch indicated in a personal interview on January 22, 1974, at the Northwestern University Law School, that the provision's final language was ambiguous, in part due to a failure of many delegates to grasp the entire concept of the amendatory veto. In addition, those delegates who did understand the operations of the provision were hesitant to create inflexible procedural regulations that might defeat the overall intent of this progressive veto.

47. 1971 OP. ILL. ATT'Y GEN. 113.
Nevertheless, it appears that since the Convention opted for the word "recommendation" instead of "amendment" in the provision, the Legislature should be allowed to make constructive changes in the Governor's suggestions, despite contrary positions expressed during the debates. After working on a bill on the floors and in the committees of each house for months, the Legislature deserves more of a choice than an inflexible "pass it" or "override it" decision.49

**The Scope of the Governor's Power—Substantive or Technical?**

A similar interpretive dilemma exists on the other side of the lawmaking fence. The delegates failed to advise the Governor as to the extent of his newly discovered power. The only real clues to the limits of the veto power came from a discussion between the delegates:

MR. R. SMITH: We had testimony to the effect that many of the bills that are returned are returned for corrections or for simple deletions—simply to clean up the language. If the legislature can, instead of sending something back into committee, take care of that kind of a problem in one day, we felt that that would be a substantially progressive move.

MRS. NETSCH: Then was it the committee's thought that the conditional veto would be available only to correct technical errors?

MR. ORLANDO: No, ma'am.50

On the other hand, the explanation and commentary section of the Legislative Committee on Styling, Drafting and Submission mentions the amendatory veto with reference only to "technical flaws" in legislative wording.61 Thus, the convention once again left the scope of the provision in a cloudy haze. The clear intent of the delegates was to maximize the efficiency of the legislative process. The path to effective-

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48. 6TH ILLINOIS CONSTITUTIONAL CONVENTION, VERBATIM TRANSCRIPT, vol. 3, at 1355.
49. Transcript of the Senate Session, May 1, 1973, at 40, 41. This theory, expressed by Senator Howard W. Carroll, is one of the veto's opponents' most persuasive arguments for altering the present provision. However, the proposed constitutional amendment would not resolve this ambiguity in the amendatory veto clause. See note 76 infra.
50. 6TH ILLINOIS CONSTITUTIONAL CONVENTION, VERBATIM TRANSCRIPT, vol. 3, at 1356.
51. The applicable passage states:
This proposed section, which has no counterpart in the existing Illinois Constitution, offers an alternative to the veto which will be especially helpful when the Governor finds reason to object to portions of a bill whose general merit he recognizes. For example, he is now with some degree of regularity compelled to veto some measures merely because of a technical flaw in their wording.
6TH ILLINOIS CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSALS, vol. 6, at 403.
Amendatory Veto

ness, however, was not specified. The implications from the Convention's committee reports reveal that many delegates preferred a strict, narrow scope of power. On the other hand, Attorney General Scott has advocated that the more flexible interpretation be upheld. Perhaps an examination of two Governors' experiences with the amendatory veto power can suggest which interpretation is more workable.

THE AMENDATORY VETO IN ACTION

Governor Richard Ogilvie was the first person to wield the amendatory veto power in Illinois. During the Seventy-Sixth General Assembly Session, the Governor exercised his amendatory veto on forty-one bills. Of this group, thirty-one involved changes of substance, and four were completely rewritten. Twenty-four bills with substantive changes were approved and certified, but seven others were not accepted by the Legislature. In the Seventy-Seventh General Assembly, Governor Ogilvie used the veto power on fifty bills representing 2.5 percent of the total number of bills passed by the Legislature. This group included thirty-nine amendatory vetoes returned because of substantive policy disagreements.

A package of three bills dealing with aid to private schools was among the group that the Governor and the Legislature failed to agree upon initially. Ogilvie substantially altered the bills, using his amendatory veto power to insure that the legislation conformed with a recent Supreme Court decision on parochiaid. The Governor noted in his veto message:

[T]he changes are designed to further reduce the possibility that there could be any appearance of impermissible or extensive entanglement, as outlined by the Supreme Court's latest decisions . . . . Accordingly, before signing the bills into law, at the request of the proponents and under the authority vested in me by Article IV, Section 9(e) of the Illinois Constitution, I am returning the

52. Once again, Senator Netsch indicated in the January 22, 1974, interview that the ambiguity created by the debate was not as unintentional as it might appear. Some delegates felt that strict procedural guidelines might thwart the progressive and pragmatic characteristics of the amendatory veto provision. As a result, Senator Netsch chose not to respond to Delegate Frank Orlando's frequently quoted "No, ma'am" answer.
53. In addition, although the language of the floor debate does not expressly support this thesis, Senator Netsch noted in the January 22, 1974, interview that this feeling was indeed prevalent among numerous delegates.
56. Hanley, supra note 33, at 11.
57. Id.
bills to the General Assembly with specific recommendations for change.\(^5\)

Governor Ogilvie's efforts resulted in the one and only court case to date which has dealt with the issue of the scope and limitations of the amendatory veto power in Illinois.\(^6\) Unfortunately, for the sake of interpretation of the constitutional provision, the Illinois Supreme Court's comments on the amendatory veto in *People ex rel. Klinger v. Howlett* were only dicta. The case was decided instead on the technicality that the Governor had no power to allocate the parochiaid funds since the law would not become effective until July 1, 1972, nearly eight months after the Governor had appropriated the funds for the legislation.\(^6\) Additionally, in the one paragraph which dealt exclusively with the scope of the veto power, the court failed to clarify the limitations of the Governor's power:

Upon the basis of the imprecise text of the constitutional provision and the materials before us in this case, we cannot now attempt to delineate the exact kinds of changes that fall within the power of the Governor to make specific recommendations for change. It can be said with certainty, however, that the substitution of complete new bills, as attempted in the present case, is not authorized by the constitution.\(^6\)

Therefore, according to this dicta, complete substitution of bills is unacceptable. Yet, the court ducked any attempt to tell the Governor what changes would be permissible. Although the court implied the Governor could make more than grammatical revisions in a bill, it did not define the potential scope of these alterations. The *Klinger* decision baffle[d] Ogilvie, who failed to understand how the court could interpret the bill he suggested as a complete substitution for those originally passed by the General Assembly.\(^6\) In the words of one who sympathized with the Ogilvie position, "the Illinois Supreme Court's early decision left much to be desired."\(^6\) Governor Ogilvie left office in January, 1973, without receiving any judicial delineation of the powers he was leaving behind in Springfield.

The next inhabitant of the Governor's mansion, Daniel Walker, has met with limited success in his application of the amendatory veto

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61. *Id.* at 248, 278 N.E.2d at 87.
62. *Id.* at 249, 278 N.E.2d at 88.
64. *Id.* at 16.
power. In the Seventy-Eighth General Assembly Session, the Governor used his amendatory veto power on thirty-seven bills. The Legislature approved only two of the thirty-seven bills amended by the Governor during the regular session. In response to one of those amended bills, the General Assembly overrode the Governor’s veto of a sixteen million dollar supplementary assistance grant to the Chicago Transit Authority. Most recently, in the 1973 special legislative session, the Governor and the Legislature combined to pass into law a limited death penalty bill, complete with Walker’s alterations of the original bill. When the legislation came to the Governor initially, the bill (House Bill 18) included the mandatory death penalty for what the Governor felt was an inappropriate number of crimes. Therefore, he utilized the amendatory veto to delete those crimes from the bill.

The Governor also used the power to insert into the bill a three-judge final review board which could spare the convicted killer of the death sentence if a majority of the court found a compelling reason for saving the murderer’s life. Finally, the Governor added a paragraph to ensure that no execution would be performed until there has been a “final adjudication that the sentence is constitutional.” In his veto message Walker noted that it was his intent to modify the bill not only to coincide with his personal beliefs, but also to increase the likelihood of its being held constitutional.

The interplay up to this point was reminiscent of Governor Ogilvie’s handling of the parachiaid legislation, with the Chief Executive making substantive changes in the bill passed by the General Assembly. How-

66. Id.
67. ILL. REV. STAT. ch. 38, § 9-1(b) (1973); id. § 1005-5-3.
69. Governor Walker omitted the mandatory death sentence for
   (1) the murder of an individual who was an elected official of any public
       office, Federal, State or local, or a candidate for any such office;
   (2) the murder of an individual as a result of the intentional destruction,
       alteration, disruption or adulteration of community water, electric, gas,
       sewage or transportation facilities, or the contamination of liquid or
       solid food products intended for community consumption;
   (3) a person who procured the commission of the murder by another
       through a contract, agreement or understanding by which he promised
       or suggested the payment of money or anything of value in return for
       the commission of the murder;
   (4) the murder of an individual who was a witness subpoenaed to testify
       at a preliminary hearing, trial or grand jury proceeding against the de-
       fendant;
   (5) a person who was under a sentence of life imprisonment at the time
       of the murder.
71. Id.
72. Id.
ever, one very important development occurred in the legislative life of House Bill 18. Upon receiving the death penalty bill recommendations from Governor Walker, the General Assembly proceeded to act in a manner that would have horrified some of the delegates to the Constitutional Convention. Despite the Convention’s apparent intent to forbid the Legislature from making any further alterations upon receipt of the amendatory veto message, the General Assembly surreptitiously made two changes in the bill. In the paragraph which dealt with the compelling reasons against sentencing a defendant to death, the Legislature added the words “for mercy” to explain the primary justification for saving the convicted felon’s life. Additionally, the General Assembly amended the final paragraph of the bill to further explain what is meant by the final adjudication:

For purposes of this Section, “final adjudication” means the completion of the ordinary appellate process in a single case and does not contemplate the exhaustion of all available remedies.

Since these changes were not objectionable to Governor Walker, he certified the death penalty bill with his own substantive changes included, and the bill was enacted into law. If the veto provision had been strictly interpreted, preventing any substantive changes by the Governor and prohibiting further revisions by the Legislature, the death penalty bill would still be in a stalemate. Despite this example of governmental efficiency by means of the flexible interpretation of the amendatory veto provision, the General Assembly continued to lend vociferous support to a resolution passed in May, 1973, which would prevent the Governor from making any further substantive changes in legislation.

THE LEGISLATIVE RESPONSE

House Joint Resolution—Constitutional Amendment 7, sponsored

73. ILL. REV. STAT. ch. 38, § 1005-8-1A(5) (1973)
74. Id. § 1005-8-1A(6)
76. HJR-CA7, 78th Gen. Assembly, 1st Sess. (1973). The provision states:
RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREBIN—that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, occurring at least six months after the legislative approval of this proposition, in the manner provided by law, a proposition to amend Section 9, paragraph (e) of Article IV of the Constitution, to read as follows:
ARTICLE IV, THE LEGISLATURE. Section 9. Veto Procedure (e)
by Representative Charles Fleck and co-sponsored by thirty-one other representatives, was the Legislature's attempt to limit the amendatory veto power to "correction of technical errors or matter of form." The resolution will appear on the ballot in November, 1974, for the voters' approval. This attempt to provide some bulwark against the Governor's powers passed both houses by overwhelming votes, signaling their desire to interpret article IV, section 9(e), of the constitution in its narrowest light. Apparently the sentiment in the General Assembly was that the voters would consider this proposed amendment an opportunity to express a desire for further separation of powers in government. According to Senator Robert W. McCarthy, the vote in November will determine the life of the democratic form of government in Illinois:

That conflict as you know, Mr. President, the conflict between the Executive and the Legislature is not unique to the other 49 states. Presently, it's quite an issue at the national government, it's been an issue in Germany during the time of Hitler. He had a legislature, but not much power, and so I think the public is very much interested in expressing themselves on the question of proper compartmentalization between the Legislature and the Executive.

Expressing a more realistic but minority opinion, Senator Netsch argued in vain against the resolution. Referring to the veto provision as passed by the Convention, the Senator observed:

I do not think the language that was used was as good as it ought to have been and I felt very regretful about that, but I find the idea a very important one and a very useful one and I think it is terribly important to make one thing clear and that it is not intended and is not a vehicle for giving the Governor additional power. It was always thought to be a means of accommodation... between the Governor and Legislature.

Apparently, the legislators appear confident that the constitutional

The Governor may return a bill together with specific recommendations for the correction of technical errors or matters of form to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill. If, however, the specific recommendations are accepted by a record vote of a majority of the members elected to each house, the bill shall be presented again to the Governor and, if he certifies that the acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, the Governor shall return it as a vetoed bill to the house in which it originated.

SCHEDULE. This amendment of Section 9, paragraph (e) of Article IV of the Constitution is effective for each session of the General Assembly newly convening after its adoption by the electors of this State.

77. Legislative Digest, No. 22 Senate Bill Resolutions, Sept. 21, 1973.
79. Transcript of the Senate Session, May 1, 1973, at 33.
80. Id. at 34-35.
amendment will pass, for if it fails, the Governor will have the implied approval of the people to make further substantive changes in legislation.\textsuperscript{81} If the amendment fails and if amendatory gubernatorial activity of a substantive nature continues, the Illinois Supreme Court undoubtedly will once again interpret the amendatory veto provision. At such a time, the court should attack the issue of the scope of the veto power with more vigor than it exhibited in the \textit{Klinger} decision.\textsuperscript{82}

\textbf{CONCLUSION}

Interpreting the scope of the amendatory veto power in Illinois is analogous to watching a three-ring circus. In the arena to the right stands the General Assembly, favoring the utilization of the amendatory veto power only for technical revisions. The Legislature's enthusiasm for a strict interpretation is tempered by the possibility that the courts will allow the Governor to make major substantive changes. In that case, the General Assembly hopes to be able to make revisions to the Governor's recommendations. Why, the legislators ask, should the Governor be able with one stroke of his pen to erase hours of careful study and analysis? Therefore, the General Assembly favors a broad latitude for itself and narrow parameters for the Governor.

In the ring to the left sits the Governor, possessively cuddling his new veto power. The Chief Executive wants the broadest possible interpretation of his powers under the veto provision so he can run the state government as effectively as possible without provoking criticism that he is acting dictatorially. The Governor, therefore, favors a flexible interpretation of the provision when his powers are at issue, but a narrow reading of the Legislature's ability to revise his recommendations.

Meanwhile, in the middle ring the courts have been standing quietly by. This arena has been the scene of a number of indications in the past that broad, reasonable interpretations of constitutional provisions are consistent with the intent of the framers and will survive the test of judicial scrutiny. Judging by the Illinois Supreme Court's hesitancy to tackle the amendatory veto problem in \textit{Klinger}, the chances are excellent that the court will reserve judgment on the scope of the veto power until the results of the November, 1974, elections are tabulated.

Therefore, the taxpayers, the occupants of the circus seats, will decide

\textsuperscript{81} Obviously, the ramifications of the November vote are important to the Governor. However, William Goldberg, special counsel to Governor Walker, indicated during a telephone interview on January 21, 1974, that no decision has been made as to whether or not the Governor plans to actively campaign against the amendment.

\textsuperscript{82} People \textit{ex rel.} \textit{Klinger} v. \textit{Howlett}, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).
the fate of the amendatory veto in Illinois. By passing Constitutional Amendment 7, the voters will tip the scales so that for all practical purposes the power of the Governor is reduced to that of a proof-reader searching for minor technical errors in the manuscript. If the voters act wisely and reject the amendment, the courts are likely to give the Governor freedom to make substantive changes in legislation within reasonable limits. It is also likely that the courts would grant the General Assembly the flexibility to constructively revise the Governor's recommendations. This attitude of flexibility would be consistent with the Convention's desire to maximize the legislative efficiency of state government.

So until November of 1974, the voters can cringe with the Legislature in terror, applaud with the executive branch in delight, or remain with the judiciary in seclusion, at the three-ring amendatory veto circus in Springfield.

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